STATE OF MICHIGAN

COURT OF APPEALS

LISA PAGE and ALEXANDER PAGE,

Plaintiffs-Appellants,

v

METRO SKATE, INC., d/b/a LAPEER SKATING CENTER, INC.,

Defendant-Appellee.

UNPUBLISHED
April 10, 2003

No. 238755
Lapeer Circuit Court
LC No. 00-028785-NO

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiffs Lisa and Alexander Page[1] appeal as of right from the trial court's order granting summary disposition, MCR 2.116(C)(10), in favor of defendant Metro Skate, Inc. Plaintiff allegedly suffered injury from a slip and fall inside defendant's roller skating rink. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

According to plaintiff, she entered defendant's roller skating rink at approximately 2:45 p.m. on July 1, 1999, to pick up her daughter Nicole who had been attending a private party. The session was to end at 3:00 p.m. Plaintiff testified that the rink was lit only with colored lights over the skating rink area and with white light inside the skate rental booth. The outside door was propped open, and it was sunny. Plaintiff, who was carrying her infant son, went to a picnic table near the rental booth and sat at the table. She did not notice anything on the ground as she walked to the table. She claimed that children were moving throughout the area while she waited. The session ended, and plaintiff remained at the table until approximately 3:10 p.m. At that time, she stood, picked up her son, and took a step back with her left foot toward the rental window. She felt something under her foot. She felt her ankle "pop," and she fell. Her daughter discovered a roller skate on the floor where she had placed her foot. It appeared to plaintiff to be a rental skate approximately twelve inches in length. As a result of the accident, plaintiff sustained a broken ankle. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on the ground that the condition causing plaintiff's injury fell

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[1] Alexander Page brought a consortium claim arising from his wife's alleged injuries. The remainder of this opinion will refer to Lisa Page as "plaintiff."

within the open and obvious danger exception to defendant's duty to warn business invitees of dangerous conditions on the property. Plaintiff now challenges the trial court's decision.

When deciding a motion for summary disposition pursuant to MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000).

In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, this duty does not generally encompass removal of open and obvious dangers. *Lugo, supra*; *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). Whether a danger is open and obvious depends upon whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). If the danger is one that falls within this category, recovery is precluded absent a particular showing that "special aspects" make the danger "ureasonable" despite its open and obvious nature. "In sum, only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Lugo, supra* at 518-519.

In the instant case, plaintiff first maintains that the dangerous condition that led to her injury was not open and obvious. We disagree. Although plaintiff argues that the skate could not have been seen due to the poor lighting conditions, she testified that, although the rink was dimly lit, light from the skate rental area approximately three feet away was filtering out to the area where she chose to sit. She also admitted that she was able to see the floor in the area where she walked as she approached the booth and was, in fact, watching the floor when she sat down. She stated that she did not have trouble avoiding various other articles on the floor as she walked out of the rink with her daughter's assistance after her injury. In addition, plaintiff admitted that she was aware of the lighting. Thus, any danger presented by an item on the floor was open and obvious in that plaintiff could have noticed it through a casual inspection. [2]

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[2] Plaintiff's cites *Clark v Kmart Corp*, 465 Mich 416; 634 NW2d 347 (2001) to raise a somewhat collateral issue as to whether defendant could reasonably be expected to have knowledge of the existence of a skate left on the floor. We find *Clark* distinguishable from the instant case because *Clark* did not discuss the issue of whether the dangerous condition in that case (grapes on a store floor) was open and obvious. Moreover, unlike the situation in *Clark* where the circumstantial evidence supported a finding that the dangerous condition had existed for a length of time sufficient to provide constructive notice to the defendant, plaintiff's deposition testimony here provides some indication that the skate was on the floor for only ten minutes before the injury occurred.

Plaintiff next argues that the dangerous condition fell within the "special aspects" exclusion to the open and obvious danger exception due to the "uniquely high" likelihood of harm. We disagree. The presence of an inadvertently dropped roller skate on the floor of a skating rink is not so unusual as to constitute a uniquely high likelihood of harm. The alleged lighting deficiencies in the rink do not change this result given that plaintiff admitted that she was still able to view the floor near her seat.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood